market with only two firms will have higher prices than a market with three or more competitors.

Illustrating this, a former Chairman of the Federal Trade Commission has noted, "2-to-1 or 3-to-2 mergers in well-defined markets protected from entry are likely to pass the anticompetitive theory test simply because of the very low number of competitors."[49] Similarly, commenting on possible perceptions that the Department of Justice would not oppose mergers that left more than two firms in a market, a Deputy Assistant Attorney General in the Antitrust Division of the U.S. Department of Justice noted: "...some [have] speculate[d] that we have lost confidence in our ability to predict when a merger, other than a 3-to-2 merger, will increase the likelihood of coordination or to win such cases in court. Standing here today, I want to disabuse you all of that view."[50] He apparently saw no need to respond to speculation about how the Department would respond to 3-to-2 mergers. Very recently, a former Assistant Attorney General in the Antitrust Division is quoted as saying that "Any 'three to two merger' to my mind would require a significant investigation."[51]

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[49] Timothy J. Muris, Understanding Mergers: Strategy and Planning, Implementation, and Outcomes, December 9, 2002, http://www.ftc.gov/speeches/muris/mergers021209.shtm. The Office of Fair Trading in the United Kingdom, Revision to *Mergers – substantive assessment guidance*, Exception to the duty to refer: markets of insufficient importance, OFT516b, November 2007, reaches a similar conclusion: "...where the OFT considers each merging party to be the *only* significant competitor to the other (a '2 to 1' merger) or one of only two (a '3 to 2' merger), the merger would typically lead to large price increases and/or quality or innovation cutbacks, which will endure into the medium term and potentially beyond...." (emphasis in original). Although the language is from a document that considers "markets of insufficient importance," the point is clearly more general. http://www.oft.gov.uk/shared_oft/business_leaflets/enterprise_act/oft516b.pdfand/or.

[50] William J. Kolasky, Coordinated Effects in Merger Review: From Dead Frenchman to Beautiful Minds and Mavericks, April 24, 2002, http://www.usdoj.gov/atr/public/speeches/11050.htm.

[51] See Thomas Barnett, Ex-Antitrust Chief: Yahoo!/Microsoft Deal Hard Call, Yahoo! Press Room, February 6, 2009, http://yhoo.client.shareholder.com/PRESS/inthenews.cfm?ArchiveWeek=20090206. As noted above, modern antitrust authorities would not always oppose a highly concentrating merger. Among ameliorating factors might be product heterogeneity, difficulty in detecting and punishing deviations from coordinated behavior, the presence of a maverick firm, the ability of rival firms to expand output or reposition their products, the ease of entry, and efficiencies that are likely to result from the merger.

Conclusion

Virtually all theoretical models of oligopoly predict that highly concentrated industries will not exhibit competitive behavior. Moreover, a substantial body of empirical evidence indicates that concentration often leads to higher prices even in markets with low entry barriers. Together, these are sufficient to justify the presumption that duopolies will *not* price competitively. Without further detailed analysis, therefore, the FCC cannot conclude that the presence of only two firms is sufficient to achieve a competitive outcome and they can reasonably presume that the entry of a third firm is likely to result in prices that are closer to competitive levels.

Moreover, in some cases, the combination of two weak competitors eould actually increase the competition faced by a dominant firm. My point rather is that it would be a startling departure from consensus policy to *presume* that a three to two merger would not result in higher prices.

I hereby declare under penalty of perjury that the foregoing is true and accurate to the best of my knowledge and belief.

Executed on April 22, 2009

Stanley M. Besen

Stanley M. Besen

STANLEY M. BESEN

EDUCATION

City College of New York
B.B.A., Economics (1958)
Yale University
M.A., Economics (1960)
Ph.D., Economics (1964)

PROFESSIONAL EXPERIENCE

2008- Senior Consultant, CRA International, Inc.

1992-2008 - Vice-President, CRA International, Inc.

1980-1992 - Senior Economist, The Rand Corporation, Washington, D.C.

1990-1991 - Visiting Professor of Law and Economics, Georgetown University Law Center

1988-1989 - Visiting Henley Professor of Law and Business, Columbia University

1985-1988 - Coeditor, Rand Journal of Economics

1978-1980 - Co-Director, Network Inquiry Special Staff, Federal Communications Commission

1971-1972 - Brookings Economic Policy Fellow, Office of Telecommunications Policy, Executive Office of the President

1965-1980 - Assistant Professor, Associate Professor, Professor of Economics, Allyn R. and Gladys M. Cline Professor of Economics and Finance, Rice University

1963-1965 - Economist, Institute for Defense Analyses

1962-1963 - Acting Assistant Professor of Economics, University of California, Santa Barbara

CONSULTANCIES

The Rand Corporation, 1972-1978

Office of Telecommunications Policy, Executive Office of the President, 1972-1977

Department of Defense, 1967

PROFESSIONAL ACTIVITIES/HONORS

Member, National Research Council Board on Earth Sciences and Resources, Division on Earth and Life Studies, Committee on Licensing Geographic Data and Services, 2002-2004

Member, The National Academies Computer Science and Telecommunications Board Committee on Internet Searching and the Domain Name System, 2001-2004

Member, Editorial Board, Economics of Innovation and New Technology, 1989-present

Member, Editorial Board, Information Economics and Policy, 1992-2004

Member, U.S. National Committee on Data for Science and Technology (CODATA), National Academy of Sciences/National Research Council, 1993-1996

Member, Office of Technology Assessment Advisory Panel on Communications Systems for an Information Age, 1986-1988

Member, Regional Telecommunications Planning Advisory Committee, City of Cincinnati, 1985

Member, Office of Technology Assessment Advisory Panel on Intellectual Property Rights in an Age of Electronics and Information, 1984-1985

Expert, World Intellectual Property Organization/UNESCO Meeting on Unauthorized Private Copying of Recordings, Broadcasts and Printed Matter, 1984

Who's Who in America, 1982-1983, 1984-1985, 1986-1987, 1988-1989, 1990-1991, 1992-1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003, 2004, 2005, 2006, 2007, 2008

Member, Editorial Board, Southern Economic Journal, 1979-1981

Member, Task Force on National Telecommunications Policy Making, Aspen Institute Program on Communications and Society, 1977

Brookings Economic Policy Fellow, 1971-1972

Member, Technical Advisory Committee on Business Development, Model City Program, City of Houston, 1969-1971

Wilson University Fellow, 1959-1961

Overbrook Fellow, 1958-1959

Beta Gamma Sigma, 1958

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Witness, Subcommittee on Intellectual Property and Judicial Administration, Committee on the Judiciary, U.S. House of Representatives, 1991. Prepared statement and testimony appear in **Intellectual Property and International Issues**, 102nd Congress, 1st Session.

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Witness, Subcommittee on Communications, Committee on Interstate and Foreign Commerce, U.S. House of Representatives, 1976. Prepared statement and testimony appear in **Cable Television Regulation Oversight - Part 1**, 94th Congress, 2nd Session.

ATTACHMENT D

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of Petitions of Qwest Corporation for Forbearance Pursuant to 47 U.S.C. § 160(c) in the Phoenix, Arizona Metropolitan Statistical Area	)))))))	WC Docket No. 09-135

DECLARATION OF DOUGLAS K. DENNEY ON BEHALF OF INTEGRA TELECOM, INC.

1. I am Director of Costs and Policy for Integra Telecom, Inc. ("Integra"). In this role, my responsibilities include negotiating interconnection agreements, monitoring, and reviewing and analyzing the wholesale costs that Integra and its affiliates pay to carriers such as Qwest. I received a B.S. degree in Business Management from Phillips University in 1988. I spent three years doing graduate work at the University of Arizona in Economics, and then I transferred to Oregon State University, where I completed all of the requirements for a Ph.D. except my dissertation. My field of study was Industrial Organization, and I focused on cost models and the measurement of market power. I taught a variety of economics courses at the University of Arizona and Oregon State University. I was hired by AT&T in December 1996 and spent most of my time with AT&T analyzing cost models. In December 2004, I was hired by Eschelon Telecom, Inc., which was subsequently purchased by Integra, where I am presently employed. I have participated in more than 40 proceedings in the 14-state Qwest region, including most unbundled network element ("UNE") cost proceedings that set the current UNE rates in the Qwest territory. I have also testified about issues relating to wholesale service quality (including Performance Indicator Definitions and Performance Assurance Plans) and the

wholesale cost of local service (including universal service funding, UNE pricing, geographic deaveraging, and competitive local exchange carrier access rates), interconnection agreement arbitrations and wire center non-impairment proceedings.

2. Integra is the fourth largest competitive local exchange carrier in the United States. It provides voice, data, and Internet communications to thousands of business and carrier customers in 11 Western states, including Arizona. Integra owns and operates a 2,200-route mile metropolitan area network and a 4,700-mile long haul network. Because of the prohibitive cost of self-provisioning loop and interoffice transport facilities, the company typically leases 2-wire, DS1, and DS3 loops, DS1 point-to-point enhanced extended loops ("EELs"), DS1 multiplexed EELs, and in many cases, DS3 interoffice transport facilities, from Qwest.

3. The purpose of this declaration is to demonstrate the likely financial impact of the elimination of UNEs on Integra's business in the Phoenix Metropolitan Statistical Area ("MSA"). For this purpose, Integra recently conducted separate studies of the costs it incurs to provide services via DS1 point-to-point EELs, 2-wire loops, and stand-alone DS1 loops in the Phoenix MSA and the changes to its operating margins in the event that Qwest's petition for forbearance from unbundling obligations in the Phoenix MSA was granted.

4. The DS1 point-to-point EELs study is based on the cost-based UNE price for a six-mile EEL in each density zone (which helps determine pricing based on a customer's location within an MSA) in the Phoenix MSA. Given that special access DS1s are the alternative product offered by Qwest when DS1 UNEs are eliminated, the study assumes that the cost of a DS1 EEL (with an assumed mileage of six miles) will increase to the relevant Qwest special access price for this service, which is $281.39, plus $5.98 for the Interconnection Tie Pair ("ITP"), for a total monthly special access charge of $287.37, as established in Qwest Tariff FCC

No. 1. This rate includes the 22 percent discount off of the monthly special acccss rate that would bc availablc to Intcgra undcr Qwest's Regional Commitment Plan ("RCP") if Integra were to purchase the requisite volume of DS1 EELs from Qwest as special access.[1] As summarized in the following table, if Integra werc forced to pay the special access price instead of the UNE EEL price, its per-circuit monthly recurring costs would incrcase by at least 117 percent:[2]

Integra DS1 EEL Cost Increases If Forbearance Is Granted In The Phoenix MSA		
Loop & Transport (6 miles)	Actual Cost Increase	Percentage Cost Increase
UNE Zone 1	$182.04	168.4%
UNE Zone 2	$172.17	158.6%
UNE Zone 3	$137.50	117.7%

5. In ordcr to calculate the effect of these price increases on Integra's operating margins in thc provision of a DS1 retail service, such as an integrated channelized product,[3] using DS1 EEL-based wholesale rates, we allocated to those services a proportionate share of joint and common monthly recurring expenses that Integra incurs, such as charges associated with collocation, interconnection trunking, transit, and SS7 charges. We performed this allocation using the same methodology Integra uses to determine whether its retail prices cover its joint and common costs in a market. In addition, we allocated to Integra's costs the company's sales, general, and administrative ("SG&A") expenses, network backbone costs and

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[1] *See* Qwest Corp. Tariff FCC No. 1 §§ 7.11.4.A.1 (5th revised page 7-347) (effective Aug. 19, 2006), 7.11.4.C.1.a (1st revised page 7-354.1) (effective July 1, 2003), 17.2.11.A.1 (4th revised page 17-91) (effective Aug. 19, 2006), 17.2.11.C.1.a (1st revised page 17-98.1) (effective Aug. 31, 2004), & 21.5.2.D (1st revised Page 21-41) (effective Sep. 19, 2003). The Qwest special access price of $287.37 is comprised of the weighted average (based on Qwest's switched business lines) of the special access zone 1, 2, and 3 tariff prices for a DS1 channel termination, a fixed mileage charge, a total variable mileage charge for six miles, a total ITP cost of $5.98, and a discount of 22 percent under Qwest's RCP, which applies to all components except the ITP. Special access channel termination and transport rates are dependent upon the special access zone designation and whether or not Qwest has special access pricing flexibility in a wire center.

[2] Only 4.6 percent of the lines are in UNE Zone 3 in the Phoenix MSA.

[3] This product is a multi-service T1 that delivers both voice lines and internet access.

Cap Ex. When these costs are accounted for, the total monthly special access cost of a DS1 EEL is **[HIGHLY CONFIDENTIAL BEGIN]** **[HIGHLY CONFIDENTIAL END]**.

6. Using this analysis, Integra's operating cash flow margin across all zones in the Phoenix MSA would be **[HIGHLY CONFIDENTIAL BEGIN]** **[HIGHLY CONFIDENTIAL END]**. Specifically, as demonstrated in the following table, if UNEs were eliminated, Integra's operating cash flow margin for each DS1-EEL-based circuit offered at retail would be **[HIGHLY CONFIDENTIAL BEGIN]**

[HIGHLY CONFIDENTIAL END]

Under these circumstances, Integra would not be able to profitably serve customers in the market for DS1-EEL-based services.

7. It is also important to point out that Qwest might try to increase its special access prices above current levels (as it has in the past). In fact, without the constraining effect of the availability of UNEs, it is entirely possible that Qwest would do so. Moreover, in addition to

[4]This is the average total revenue Integra receives for this product including long distance and CABs billing.

increasing the costs of wholesale inputs, Qwest could decrease its retail prices. Indeed, Qwest has already offered a promotional retail rate of $450.00 for a DS1 service.[5] Qwest may also offer, on an individual case basis ("ICB"), lower retail prices for intrastate tariffed services in order to respond to any competitor's price.[6] Qwest's past practices demonstrate the very real possibility that it would impose a price squeeze on Integra if UNEs were eliminated. A price squeeze would render Integra unable to make a profit.

8. Moreover, these concerns are not limited to DS1-EEL-based services. Integra conducted similar cost studies for 2-wire and DS1 loops. In the 2-wire loop cost study, we assumed that, post-forbearance, Integra would be required to pay at least the "commercial" rate offered by Qwest for 2-wire loops in the Omaha MSA after it received forbearance from unbundling obligations in certain wire centers in Omaha. That price is $15.71 per month per 2-wire loop.[7] As shown in the following table, based on this assumption, if forbearance is granted, the cost of a 2-wire loop in Zone 1 of the Phoenix MSA would increase by 73.6 percent:[8]

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[5] *See* Product Notification from Qwest Corp. to CLECs, Resellers, and ISPs of "2009 Spring ISDN & DSS Promotion" (dated April 3, 2009) (offering promotional pricing of $450 on Advanced Digital Switched Service on three-year contracts from May 26, 2009 to August 21, 2009) (attached hereto as Exhibit A).

[6] *See* Qwest Corp., Large Business Products & Services, Data Solutions, DS-1, www.qwest.com/pcat/large_business/product/I,1016,140_4_2,00.html (last visited Apr. 28, 2010) ("Qwest DS-1 is filed and priced in both the interstate and the intrastate tariffs. . . . In competitive situations, intrastate DS-1 service may be priced on an Individual Case Basis."). Qwest has filed notice of more than 40 ICB contracts involving DS-1 retail service in Arizona in the past year.

[7] *See* Petition for Modification of McLeodUSA Telecommunications Services, Inc., WC Dkt. No. 04-223, Declaration of Don Eben, Exhibit 3, Appendix 4 - Qwest Commercial DS0 Agreement at 69-70 (listing monthly 2-wire DS0 loop rate as $15.71) (filed July 23, 2007).

[8] Note there are no guarantees that Qwest will limit 2-wire loop rate increases to the increases Qwest imposed in Omaha. For example, Qwest's tariff FCC No. 1 § 7.4.4.A (2nd revised page 7-210) (effective July 2, 2002) contains a 2-wire standard voice channel rate of $21.57.

Integra DS0 Loop Cost Increases If Forbearance Is Granted In The Phoenix MSA		
	Actual Cost Increase	Percentage Cost Increase
Zone 1	$6.66	73.6%
Zone 2	$0.87	5.9%
Zone 3	-	-

In the 2-wire loop study, we assumed a basic voice product offering and applied all of the same cost allocations and made the same assumptions as in the DS1 EELs study. As demonstrated in the following table, the 2-wire loop study also revealed that the operating cash flow margin for 2-wire loops would be **[HIGHLY CONFIDENTIAL BEGIN]** **[HIGHLY CONFIDENTIAL END]** if UNE 2-wire loops were unavailable in the Phoenix MSA, indicating that Integra would likely be price squeezed out of the market for 2-wire loop-based services, such as business voice lines:

[HIGHLY CONFIDENTIAL BEGIN]

[HIGHLY CONFIDENTIAL END]

9. Finally, in conducting the study for the integrated channelized product using stand-alone DS1-loops, we again used the same methodology. Accordingly, as shown in the

following table, if forbearance is granted in the Phoenix MSA, the cost of a stand-alone DS1 loop would increase by at least 69 percent:

Integra DS1 Loop Cost Increases If Forbearance Is Granted In The Phoenix MSA		
	Actual Cost Increase	**Percentage Cost Increase**
Zone 1	$75.28	110.3%
Zone 2	$73.87	107.5%
Zone 3	$53.07	69.0%

We concluded that Integra's cash flow margin for the integrated channelized product without the availability of stand-alone DS1 UNE loops would be **[HIGHLY CONFIDENTIAL BEGIN]**

[HIGHLY CONFIDENTIAL END]

Such **[HIGHLY CONFIDENTIAL BEGIN]** **[HIGHLY CONFIDENTIAL END]** margins would make it difficult for Integra to justify continuing to offer DS1 loop-based services.

REDACTED - FOR PUBLIC INSPECTION

I declare under penalty of perjury that the foregoing is true and correct to the best of my information and belief.

Douglas Denney

Dated: 4/28/2010

EXHIBIT A

REDACTED - FOR PUBLIC INSPECTION

Qwest

April 3, 2009

Doug Denney
Eschelon Telecom of Arizona Inc.
Eschelon Telecom of Colorado Inc.
Eschelon Telecom of Minnesota Inc.
Eschelon Telecom of Oregon Inc.
Eschelon Telecom of Utah Inc.
Eschelon Telecom of Washington Inc.
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Minneapolis, MN 55402
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TO:Doug Denney

Announcement Date:	**April 3, 2009**
Effective Date:	**May 26, 2009**
Document Number:	**PROD.04.03.09.F.06233.ISDN_DSS_Spring_Promo**
Notification Category:	**Product Notification**
Target Audience:	**CLECs, Resellers and ISP-GET – 14 State Region**
Subject:	**2009 Spring ISDN & DSS Promotion**

This is to advise you of changes to a Qwest retail service offering. Please be advised that retail offers that are subject to Commission approval may change. Resellers should monitor filings since Qwest will not provide notification of changes.

Tariff/catalog/price list reference:

Malheur – Exchange and Network Services Catalog, Section 16
Minnesota – Exchange and Network Services Price List, Section 16
Montana – Exchange and Network Services Tariff, Section 16
Nebraska – Exchange and Network Services Catalog, Section 16
Oregon – Exchange and Network Services Tariff, Section 16
Oregon – Exchange and Network Services Price List, Section 16
Washington – Exchange and Network Services Catalog, Section 16

State(s): 14 State Region

Product Description: For a limited 88-day period from May 26, 2009, to August 21, 2009, Qwest is offering a special per span, bulk-rated promotional pricing for the following services:

	MONTHLY RATE FOR	
	3 YEAR RATE	**5 YEAR RATE**
• ISDN PRS Voice & Data or UAS option on DS1	$650.00	$550.00

• ISDN PRS Voice & Data or UAS option on DS3 or higher	625.00	525.00
• ISDN PRS Voice & Data or UAS option from RCO	700.00	600.00
• DSS with Advanced Two-Way DID trunks on DS1	450.00	425.00
• DSS with Advanced Two-Way DID trunks on DS3 or higher	425.00	400.00
• DSS with Basic Two-Way trunks on DS1	650.00	600.00

The following terms and conditions apply to customers seeking to:

- New installation of PRS, RCO and/or DSS Service in all PRS or DSS disclosed wire centers and disclosed RCOs.
- Subscribers situated in non-PRS disclosed wire centers may order PRS through a serving FCO and receive promotional rates. Intraoffice Private Line mileage applies at standard tariffed rates.
- Renew expired contracts to 3- or 5-year contract terms.
- Renegotiate current PRS, RCO and/or DSS contracts if they are within six (6) months of expiration or meet existing TLA guidelines.
- Convert month-to-month pricing to 3- or 5-year contract terms.
- Migrate PBX Trunks, DSS or UAS services to PRS, RCO and/or DSS agreements (no Migration credits).
- Promotional pricing cannot be combined with any other pricing discount.
- Welcome customers back to Qwest PRS, RCO and/or DSS 3- or 5-year contracts (no Winback credits).
- No promotional pricing is available on 1- or 2-year terms.
- Promotional pricing will apply to service added up to 12 months prior to the expiration of the contract.
- Initial services must be installed and customer must accept service no later than September 30, 2009, unless a delay is caused by Qwest due to facility shortages.
- Installation charges will be waived.
- Contracts must be signed and returned to Qwest no later than the close of business August 21, 2009.

This promotion is only available where it is technically feasible to provide services and where facilities are available. This bulk price includes the DS1 facility, common equipment, Service Configuration, and a maximum of 24 trunks for DSS and 23 trunks for PRS. No other Qwest offers or promotions can be used to further discount this service.

If you have any questions or would like to discuss this notice please contact your Qwest Service Manager, Rita Urevig on (218) 723-5801. Qwest appreciates your business and we look forward to our continued relationship.

Sincerely,

Qwest Corporation

If you would like to subscribe, unsubscribe or change your current profile to Qwest Wholesale mailouts please go to the 'Subscribe/Unsubscribe' web site and follow the subscription instructions. The site is located at:

http://www.qwest.com/wholesale/notices/cnla/maillist.html

cc:
Rita Urevig

Qwest Communications 1600 7th Ave Room 1806 Seattle WA 98008